

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

KEMAN FITZPATRICK,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-13-284-M
)	
WILLIAM MONDAY, Warden, et al,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing pro se, has filed a motion for leave to proceed *in forma pauperis* and supporting documents. Pursuant to an order entered by Chief United States District Vicki Miles-LaGrange, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Having reviewed said motion, the undersigned finds that Petitioner has sufficient funds to prepay the filing fee of \$5.00. On March 22, 2013 the Petitioner submitted a motion to proceed *in forma pauperis* and financial documentation, **ECF No. 2**. The Petitioner's offender statement report indicates \$87.73 available in the Petitioner's prisoner savings accounts. Oklahoma Department of Corrections Policy 120230.I.A.2 allows Mandatory Savings Account balances to be used to pay fees and/or court costs associated in filing a civil or criminal action. Because he does not qualify for authorization to proceed without prepayment of the filing fee, it is recommended that Petitioner's motion, **ECF No. 2**, be **DENIED** and that he be ordered to prepay the full \$5.00 filing fee for this action to proceed. 28 U.S.C. § 1915(a)(1). *Lister v. Department*

of the Treasury, 408 F.3d 1309, 1312 (10th Cir. 2005) (magistrate judge should issue a report and recommendation when denying motion to proceed *in forma pauperis*).

It is further recommended that this action be dismissed without prejudice to refiling unless Petitioner pays the \$5.00 filing fee in full to the Clerk of the Court within **twenty (20) days** of any order adopting this Report and Recommendation.

Petitioner is advised that he may file an objection to this Report and Recommendation with the Clerk of this Court by **April 15, 2013**. Petitioner is further advised that failure to timely object to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F. 2d 656 (10th Cir. 1991).

The Clerk is not to forward a copy of the petition to the appropriate state agency until further order of the Court. **This terminates the referral to the undersigned Magistrate Judge unless and until the matter is re-referred.**

ENTERED on March 28, 2013.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE